



November 3, 2009

Clerk of the Board, Air Resources Board  
1001 I Street  
Sacramento, CA 95814

RE: Comments Submitted in Response to 15-day Notice of Modified Text (Proposed  
Tire Pressure Regulations)

Dear Board Members:

The Department of Consumer Affairs, Bureau of Automotive Repair (DCA/BAR) has concerns regarding the Air Resources Board's (ARB) proposed regulation for under inflated vehicle tires. While BAR supports the ARB's efforts in this area, BAR must share its concerns regarding the possible effect such efforts may have on other public policy goals and statutory mandates. BAR has met and conferred with ARB's staff in good faith efforts to resolve its primary concerns with this proposal.

ARB's originally proposed text at Section 95550 (d) (1) (A) would require Automotive Service Providers (ASP) to "check and inflate each vehicle's tires to the manufacturer's recommended tire pressure at the time of performing any automotive maintenance or repair service..." As a result of public comment about concerns regarding what an ASP would do if the customer refuses the service or has already had the service performed, new regulatory requirements in subsections (d)(2) and (d)(3) were added. This modified text would mean that ASPs would be required to check and inflate each vehicle's tires every time a repair service is performed unless the customer requests only a free check and inflate service or if the customer provides documentation that the tires have received a check and inflate service within the preceding 30 days. For the following reasons, DCA does not believe that the currently proposed text modifications adequately resolve the compliance concerns for ASPs raised by the public.

Within the Department of Consumer Affairs, the Bureau of Automotive Repair (BAR) is responsible for enforcing and administering the Automotive Repair Act<sup>1</sup> and California's Motor Vehicle Inspection Program (Smog Check)<sup>2</sup>. BAR registers over 34,000 Automotive Repair Dealers (ARDs), including about 7,300 smog check and 1,000 lamp and brake stations. ARB's proposed regulation at Section 95550(c)(7) defines an ASP as any business or person who performs or offers to perform automotive maintenance or repair services (including, but not limited to, automotive dealerships, maintenance

<sup>1</sup> Chapter 20.3 of the Business and Professions Code, Section 9880 et seq.

<sup>2</sup> Chapter 5 of the Health and Safety Code, Section 44000 et seq.

garages, oil change facilities, tire centers, and Smog Check facilities). This definition would apply to most of BAR's licensees and registrants. Section 9884.9 of the Automotive Repair Act states, in pertinent part, that "No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer." As a result, BAR's registrants and licensees are prohibited from performing any repair services unless authorized by the customer.<sup>3</sup> Before beginning any service, BAR's registrants and licensees must obtain the customer's signature on the required estimate denoting the customer's approval to proceed with the proposed services. (Bus.&Prof.Code, § 9884.8.)

Under this current proposal, it is unclear what the ASPs who are licensed by BAR would do to comply with both ARB's proposed regulation and BAR's laws if the customer refused to authorize the check and inflate service or did not want to pay for it. As a result, unless ASPs offer the service for free to the consumer and the consumer accepts it, the regulation would have the effect of either forcing the ASPs to check the tires without the consent of the consumer in violation of BAR's Automotive Repair Act, or force ASPs to refuse to provide any repair services at all to the consumer. These are legally untenable options that would have the effect of either: (a) subjecting BAR's registered and licensed entities to possible disciplinary action when the vehicle's tire pressure is checked and tires inflated without necessary customer authorization; or (b) removing consent and control over the customer's vehicle completely, which is precisely what the Automotive Repair Act was designed to prevent. It is also important to note that the implementation options proposed by ARB staff (i.e., nullifying consumer authorization) are neither necessary nor specifically required by ARB's enabling legislation (AB 32 – Stats.2006, ch. 488).

To meet ARB's goals pursuant to AB 32 and to clarify ASPs duties under these proposed regulations consistent with the Automotive Repair Act's consumer protection mandate, DCA and BAR suggest that further modifications to the text at Section 95550 (d)(1)(A) be made to require ASPs to check and inflate the vehicle tires **unless** the customer expressly declines the service.

Additionally, while reviewing the modified text proposal on page 4 at proposed Section 95550(d)(1)(B), we note that there appears to be an error in wording at the end of the last sentence. The word "and" should probably be deleted at the very end of the last sentence to make it clearer that an ASP does not have to perform a tire pressure service on tires that the ASP considers to be "unsafe."

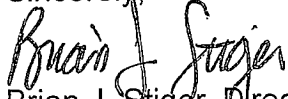
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3 Business and Professions Code section 9884.9 and Title 16 of the California Code of Regulation Section 3353.

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We look forward to continuing to work with the Board to address these concerns.

Sincerely,



Brian J. Stiger, Director  
Department of Consumer Affairs



Sherry Mehl, Chief  
Bureau of Automotive Repair, Department of Consumer Affairs